

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CURTIS NEIL BEITO,

Plaintiff,

vs.

ROGER ALDRICH, J. BRUCE
JESSEN, JAMES MITCHELL,
RANDALL W. SPIVEY, MIKE
RICHEE, MATAEO SAMS, MELISSA
SAMS, JOHN NOLETTE, C/O K.
PARKER, C/O BAUCHMANN, C/O
GALLIGER, SARGENT HODGES,
SARGENT HUGHES, and OZZIE
KNEZOVICH,

Defendants.

NO. CV-07-222-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
COMPLAINT

1915 (g)

Magistrate Judge Imbrogno filed a Report and Recommendation on July 15, 2008, recommending Mr. Beito's civil rights complaint be dismissed with prejudice as he had failed to amend his complaint, initially filed July 11, 2007, to state a claim upon which relief may be granted. Although Plaintiff's document received on July 28, 2008 was tilted, "Motion for Extension of Time and Objection to Report and Recommendation," Mr. Beito presented no specific objections to the Report and Recommendation.

The Magistrate Judge found Plaintiff had alleged no facts against Defendants Roger Aldrich, Randall W. Spivey, or C/O K. Parker.

Plaintiff failed to present facts from which the court could infer

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING COMPLAINT -- 1

1 Defendant Ozzie Knezovich, as Spokane County Sheriff, was aware of
2 constitutional violations or that any alleged violations were caused
3 by a custom or policy he established. Plaintiff failed to allege
4 "actual injury" to his access to the court against Defendants C/O
5 Galliger, Sargent Huges and/or Hodges, and Bauchman.

6 Plaintiff's allegations against Prosecuting Attorneys, Defendants
7 Mateao and Melissa Sams, and his defense attorney, Defendant John
8 Nolette, also failed to state claims upon which relief may be granted.
9 Broad allegations he was "tortured, shocked, and threatened," without
10 any reference to time, date, circumstances or alleged actors, failed
11 to state a claim upon which relief could be granted.

12 Finally, his allegations against a former employer, Defendant
13 Mike Richee, who was allegedly affiliated with Defendants Mitchell and
14 Jessen and their associates, failed to demonstrate these Defendants
15 were acting under color of state law for purposes of 42 U.S.C. § 1983,
16 or violated his constitutionally protected rights. There being no
17 specific objections to these findings, **IT IS ORDERED** the Report and
18 Recommendation (Ct. Rec. 22) is **ADOPTED in its entirety** and the
19 complaint is **DISMISSED with prejudice** for failure to state a claim
20 upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and
21 1915A(b)(1).

22 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
23 prisoner who brings three or more civil actions or appeals which are
24 dismissed as frivolous or for failure to state a claim will be
25 precluded from bringing any other civil action or appeal *in forma*
26 *pauperis* "unless the prisoner is under imminent danger of serious
27 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**
28 **ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING COMPLAINT -- 2**

1 the new statutory provisions under 28 U.S.C. § 1915. This dismissal
2 of Plaintiff's complaint may count as one of the three dismissals
3 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
4 file future claims.

5 IT IS SO ORDERED. The District Court Executive is directed to
6 enter this Order, forward a copy to Plaintiff at his last known
7 address, enter judgment, and close the file. The District Court
8 Executive is further directed to forward a copy of this Order to the
9 Office of the Attorney General of Washington, Criminal Justice
10 Division.

11 DATED this 11th day of August 2008.

12
13 s/ Fred Van Sickle
14 FRED VAN SICKLE
15 SENIOR UNITED STATES DISTRICT JUDGE
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